Letters Patent Appeal No.356 OF 2001

****

Against the Order dated 08th March, 2001 passed In CWJC no. 13522 of 2000.

****

STATE BANK OF INDIA & ORS--------Appellants
Versus
SANJEEV KUMAR SINHA----------Respondent

****

For the Appellants : Ms. Namrata Mishra

For the Respondent :

****

P R E S E N T

THE HON'BLE MR. JUSTICE BARIN GHOSH
THE HON'BLE MR. JUSTICE JAYANANDAN SINGH

WEB COPY NOT OFFICIAL

Barin Ghosh &
J.N. Singh, JJ.

One Sri Gopal Nandan Prasad Sinha, while working as Deputy Manager of the appellant and posted at the Appellant's Zonal Office at patna, died in harness on 30th August, 1996. In as much as the appellant had a scheme for giving appointment on compassionate ground to a member of the family of a deceased employee

of the appellant, who has died in harness, the writ-petitioner respondent on 17th September, 1996 applied for a compassionate appointment since his father late Gopal Nandan Prasad Singh died in harness. It took four years for the appellant to decide the fate of the application. Ultimately, by an order dated 17th August, 2000, the said application was rejected. In the meantime, however, a rejection was made in the year 1998, without reasons and, accordingly, in a writ petition the appellant was directed to reconsider the application and to give reasons in support of the decision.

WEB COPY NOT OFFICIAL

2. In the order it has been stated that the deceased employee suffered punishment in a disciplinary action in January, 1996. The order further states that in the subsequent disciplinary proceeding a decision was taken by the

Disciplinary Authority but the said decision could not be communicated to the deceased before his death. It was next stated that the Central Bureau of Investigation registered a case against the deceased employee for amassing huge assets but the case was closed on the death of the deceased. Apropos this, it was stated that compassionate appointments were given to Smt. Sheel Prabha Madhukar, Smt. Aruna Sinha and Sri Amit by the Bank on merits and to Smt. Neelam Shah on the approval by the Government of India and in all those cases the service records of the deceased employees of the appellant were unblemished. At the same time, it was stated that upon the death of the deceased the family would receive approximately Rs.5.5 lacs and family pension of Rs.5,243/- per month. It was also stated that the family is earning a

WEB COPY NOT OFFICIAL

rental income of Rs.1,550/- per month and as such the income of the family would be Rs.10,000/- per month. The order states that the decision of the Hon'ble Supreme Court rendered in the case of Sri Umesh Kumar Nagapal Vrs. State of Haryana & Ors. (Reported in 1994(4) SCC 138) was forwarded to the appellant. The order stated that the said judgment was forwarded to the Ministries and Departments of the Government of India for information and compliance and was received by the Banking Division under cover of a letter dated 07th August, 1996. Ultimately, it was concluded that financial resources of the family and the service records of the deceased did not make the applicant eligible and, accordingly, compassionate appointment was denied.

WEB COPY NOT OFFICIAL

3. It is unfortunate that the order does not consider the Scheme under which

appointment on compassionate ground had been applied. The relevant Scheme is of 17th March, 1979. That granted discretion to the appellant to give compassionate appointment to the persons identified in the Scheme upon their fulfilling the criteria for appointment, which require making of an application by the person eligible within one year of the date of the death of the deceased employee. It provided that in case one of the members of the family is already in the employment of the appellant or of some other employer, the appellant at his discretion may consider giving employment to any other member of the family taking into account the individual circumstances of each case i.e. the income of the member of the family already employed, the size of the family and other relevant considerations. The Scheme, therefore, made it absolutely

WEB COPY NOT OFFICIAL

clear that while exercising its discretion to give appointment to a second member of the family the appellant would exercise its discretion upon considering individual circumstances of each case, and such circumstances would revolve around income of the member of the family already employed, the size of the family and other relevant considerations. At the same time, while granting such discretion in the matter of giving the first appointment no such stipulation had been made in the Scheme. In the circumstances, the one and the only conclusion would be that the appellant by the order dated 17th August, 2000 refused to exercise discretion in favour of the applicant for grant of compassionate appointment solely on the ground that the record of the deceased was not unblemished. User of discretion on such basis, when

WEB COPY NOT OFFICIAL

disciplinary measure on the single concluded disciplinary proceeding was not substantial, cannot be held to be sound. It is true that the income of the family after the death of the deceased employee was taken note of, but for the reasons already indicated above the same, being one of the components to be taken note of while considering an application for appointment in a family, a member of which is already in employment, could not be taken note of in terms of the Scheme while considering an application for only one appointment in the family.

WEB COPY NOT OFFICIAL

4. It is true that an appointment on compassionate ground is per se illegal for the same violates the provisions of Articles 14 and 16 of the Constitution of India, but still then a Scheme made for grant of such appointment can be upheld only on the principle that the society has the

responsibility of looking after the family of an employee engaged to serve the society upon his untimely death. In the circumstances, only in case where for the loss of the bread earner, the family would be on the verge of starvation, a Scheme for grant of compassionate appointment can be justified. It is also true that the Hon'ble Supreme Court has time and again pointed out the same. Despite the Hon'ble Supreme Court having had pointed out the same and despite the same having been brought to the notice of the appellant, the appellant, however, did not alter the scheme for giving compassionate appointment. The order passed by a Court in relation to a litigation to which the appellant was not a party or any of its employees was a party could not be binding on them. Despite the judgment of the Hon'ble Supreme Court rendered in the

WEB COPY NOT OFFICIAL

case of Umesh Kumar Nagpal (Supra) having been taken note of by the appellant, the appellant failed to suitably alter the Scheme. That having not been done, the Scheme then in existence, gave a right to the members of the family of the deceased employee for a compassionate appointment in terms of the Scheme.

WEB COPY NOT OFFICIAL

5. In the event the Scheme had talk of user of discretion on the basis of income, with which the family will be left after the death, there cannot be any doubt that the post death income of the family ought to have had been considered, which includes family pension, reasonable return of investments of terminal dues and other incomes of the family, but when the Scheme says that such matters would be considered while granting appointment to a member of the family where another member of the

family is already in employment, the same standard could not be applied while exercising discretion for grant of compassionate appointment to one member of the family.

6. In the circumstances, the decision rendered in the order under appeal on the writ petition of the son of the deceased employee, directing reconsideration of the case of the said applicant afresh is not interferable. The appeal fails and the same is dismissed.

WEB COPY
NOT OFFICIAL

(Barin Ghosh, J.)

(J.N. Singh, J.)

Patna High Court,
The 14th July, 2008.
AAhmad/(NAFR).